

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Bashant <i>et al.</i>	Conf. No.:	8800
Serial No.:	10/614,968	Art Unit:	2176
Filing Date:	07/08/2003	Examiner:	Shah, Sanjiv
Title:	SYSTEM AND METHOD FOR SYNCHRONIZING RELATED DATA ELEMENTS IN DISPARATE STORAGE SYSTEMS	Docket No.:	END920000147US2 (IBME-0001DIV)

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a *prima facie* case of obviousness based on an error in facts. Claims 1-10 are pending in this application.

Turning to the rejection, in the Final Office Action, claims 9 and 10 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Claims 1-10 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Zoltan (U.S. Patent No. 6,529,917), hereafter “Zoltan,” in view of Hagerman (U.S. Patent Pub. No. 2005/0044354 A1).

Applicants initially submit that these rejections are clearly not proper and without basis because use of the Zoltan reference is improper. Specifically, the combination of the exhibits that accompany Applicants Declaration Under 37 C.F.R. §1.131 establish a *prima facie* case of

prior conception and diligence to reduction to practice. See Final Office Action, pages 5-7. For example, while the Exhibit B Disclosure has a creation date that is the same as the filing date of Zoltan, the Exhibit A specification was clearly created prior to this date, and contains information that shows that Applicants conceived the invention prior to the effective date of the Zoltan reference, furthermore, even though the Exhibit A specification was edited subsequent to the effective date of the Zoltan reference, the reference itself indicates what was added and / or subtracted. Accordingly, the references, taken in combination show conception of the invention prior to the effective date of the Zoltan reference and diligence to date of filing.

Applicants further submit that these rejections are clearly not proper and without basis because the language of claims 9 and 10 clearly define the metes and bounds of the invention. Request for Reconsideration, page 8. For example, it is clear that the language of claim 9 describes two storage systems that are designed to store data that is different from each other and that are not merely replicas of one another. Furthermore, the language of claim 10 makes clear that the storage systems do not store the keys or other information that is used to synchronize the storage systems with one another.

Applicants still further submit that these rejections are clearly not proper and without basis because at least one claim limitation is not met by the combined features of the references cited by the Office. As argued in the September 27, 2006 Request for Reconsideration, the cited references fail to teach or suggest each and every element of independent claim 1. In particular, the cited references fail to teach or suggest a table of keys for synchronizing related data elements between a first and second storage system, each key comprising: a universal identifier corresponding to a data element in the first and second storage system; a first record identifier corresponding to the data element in the first storage system; and a second record identifier

corresponding to the data element stored in the second storage system. See September 27, 2006 Request for Reconsideration, page 8-9. The Office admits that Zoltan does not expressly teach that the identifier columns that it equates with the key of the claimed invention are elements of a single key in a single table. However, the Office's unsupported factual assertion that it would be obvious to combine the identifier columns is counterintuitive, because the removal of the key column from the satellite table of Zoltan would leave the satellite table with nothing to match it with the master. Such a modification would cause Zoltan not to accomplish its intended purpose, that is, to synchronize the satellite table with the master. To this extent, there is no teaching or suggestion in the references themselves or in the art for combining the Office's factual assertion with Zoltan. Hagerman does not cure this deficiency.

As further argued in the December 22, 2005 Amendment, there is no motivation or suggestion in the references or in the art for modifying the references because the references are from non-analogous art and solve different problems. Specifically, while the Zoltan system uses the key columns of its master and satellite tables to provide replication of data between a master table and a satellite table, the key values of Hagerman are used, not in data replication, but rather to provide system security by resisting spoofing system attacks. Thus, one skilled in the art would not be motivated to combine the references to achieve the solution of the claimed invention.

Accordingly, the Office has failed to state a prima facie case of obviousness, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

The dependent claims are believed to be allowable based on the above arguments regarding the claims from which they depend, as well as for their own additional features.

Applicants respectfully submits that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,



Hunter E. Webb
Reg. No.: 54,593

Date: October 27, 2006

Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)

RAD/hew